providing its customers with service that rescnibles wireline telephony in everything *except* its immobility." See id. ¶ 16 (internal quotation marks omitted). Plainly, Cricket has positioned itself as an actual commercial alternative to Nevada Bcll, and it accordingly qualifies as a Track **A** carrier under Commission precedent.'

II. NEVADA BELL'S PUCN-APPROVED AGREEMENTS SATISFY THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST

This section (and the affidavits and other materials supporting it) discusses Nevada Bell's contractual offerings, associated network arrangements, performance data, and other evidence that establish that Nevada Bell satisfies the requirements of the section 271 "competitive checklist." See 47 U.S.C. § 271(c)(2)(B)

Like Verizon's application for interLATA relief in Connecticut, "[t]his application differs from other[] [section 271 applications] considered by the Commission." Connecticut Order ¶ 2. As noted above, Nevada Bell serves only approximately 371,300 access lines – approximately 25 percent of the access lines in the state, and far fewer than the BOCs in a more typical section 271 application. For that reason, and because Nevada Bell's processes and systems are the same in almost all material respects as the processes and systems the Commission approved in California, Nevada Bell's showing of checklist compliance relies in part both on the proof Pacific offered (and the Commission endorsed) in California and on Pacific's ongoing performance there.

[5] Nevada Bell's Track **A** showing is further supported by CLEC provision of xDSL-based advanced services in the Nevada Bell serving area. See J.G. Smith Aff. ¶ 21 n.31 & Attach. D. The Commission has previously held that such services qualify as "telephone exchange service[s]" where they are used for "work-at-home applications and other non-Internet communications," where they "originate and terminate within a local exchange area," and where they "provide[] customers with the capability of intercommunicating with other subscribers." Order on Remand, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 385, ¶¶ 16, 23 (1999), vacated and remanded in part, WorldCom, Inc. v. FCC, 246 F.3d 690 (D.C. Cir. 2001).

Because the Commission approved the California showing as checklist-compliant, because Pacific and Nevada Bell's performance has continued to be outstanding, and because the PUCN has verified Nevada Bell's compliance with the checklist, this Commission can be assured that Nevada Bell has opened its local market and provides CLECs a meaningful opportunity to compete.

A. Checklist Item 1: Interconnection

In the California Order, the Commission "conclude[d], as did the California Commission, that Pacific Bell is in compliance with the requirements of [Checklist Item 1]." California Order ¶ 116. The same is true in Nevada, where Nevada Bell provides interconnection "at any technically feasible point" within its network that is "at least equal in quality" to the interconnection Nevada Bell provides itself, on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2); see PUCN Order at 55 (Nevada Bell "provides interconnection to competitive providers in accordance with the requirements of the Act"). CLECs in Nevada thus have access to a basic prerequisite of local exchange competition – the ability to send their customers' calls to, and receive calls from, customers of the incumbent carrier, CLECs are able to connect their networks to Nevada Bell's by the most efficient means possible, including placement of the CLEC's own equipment in Nevada Bell buildings.

To carry traffic between Nevada Bell and CLEC locations, Nevada Bell has provisioned more than 13,000 interconnection trunks. See J.G. Smith Aff. Attach. A. To ensure nondiscrimination, Nevada Bell provisions these trunks using the same equipment, processes, technical criteria, and service standards that are used for Nevada Bell's own retail trunks. See Deere Aff. ¶ 31 (App. A, Tab 5). As further discussed below, these and other steps to facilitate

interconnection between Nevada Bell and CLECs fully satisfy the requirements of Checklist Item 1. See California Order ¶ 116; Texas Order *765;* Kansas/Oklahoma Order ¶ 223

Nevada Bell's interconnection agreements, like Pacific's, establish three standard methods by which CLECs may connect their networks to Nevada Bell's: mid-span fiber interconnection, collocation, and leasing of Nevada Bell's facilities. See Deere Aff. ¶ 15. Each of these interconnection arrangements is available at the trunk side or line side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. && ¶¶ 20-21. For the purposes of interconnection to exchange local traffic, a CLEC may choose a single, technically feasible point of interconnection within a LATA. See id. ¶ 28; Texas Order ¶ 78; Kansas/Oklahoma Order ¶ 232. Nevada Bell will provide other technically feasible alternatives through a Special Request Process. See Deere Aff. ¶ 15.

1. Interconnection Trunking

Mid-span fiber interconnection ("MSFI") is available at any mutually agreeable, economically, and technically feasible point between a CLEC's premises and a Nevada Bell eligible structure – including without limitation a tandem or end office. See Deere Aff. ¶ 16. The MSFI arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via Nevada Bell's tandem switch. See id. ¶ 17. The affidavit of William C. Deere discusses interconnection interoffice trunking arrangements from a CLEC to Nevada Bell (for traffic originated by the CLEC) and from Nevada Bell to a CLEC (for traffic terminated over the CLEC's network). See id. ¶¶ 24-33.

Nevada Bell has implemented, as part of the performance reporting plan approved by the PUCN, multiple separate measures relating to interconnection trunking. Relevant measures track trunk blockage, the percentage of missed due dates, average completed interval, and timeliness of customer trouble report resolution. See Johnson Aff. ¶¶ 21, 27, 30 (App. **A,** Tab 12). With regard to trunk provisioning, Nevada Bell met all seven trunk provisioning submeasures for which CLEC data exist from September through November 2002, the last three months for which data are available. See id. ¶¶ 45-47,

With regard to trunk blockage on common trunks, Nevada Bell met the relevant measure in November 2002 after having missed it in September and October 2002 due to blockages on two common transport trunk groups. See id. ¶ 51. The September and October misses were due in part to a one-time routing error on the part of a Nevada Bell employee; and in part to a CLEC that had failed to notify Nevada Bell in advance of changes to its network, which notification would have allowed Nevada Bell to take appropriate steps to handle the additional traffic load. See Deere Aff. ¶¶ 34-39. Both issues have been addressed, and, as noted, Nevada Bell met the PUCN-approved common trunk blockage measure in November. See id. ¶¶ 40-42.

2. Collocation

CLECs in Nevada may collocate on Nevada Bell's premises equipment necessary to interconnect with Nevada Bell's network or to access Nevada Bell's unbundled network elements, in order to provide telephone exchange service and exchange access. See Shannon Aff. ¶¶ 27-72 (App. **A,** Tab 17). CLECs are taking advantage of these opportunities: four CLECs have obtained 19 collocation arrangements in Nevada Bell's central offices. See J.G. Smith Aff. Attach. D.

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Nevada Bell provides both physical and virtual collocation pursuant to its PUCN-approved collocation tariff. See Shannon **Aff.** ¶ 27. **A** CLEC may also opt into the terms and conditions of an interconnection agreement between Nevada Bell and another competing carrier (known as the most-favored nation ("MFN") option), or the CLEC may negotiate different terms and conditions. See id. ¶¶ 22. 27. Nevada Bell's terms and conditions for collocation are thus legally binding and cannot bc changed without review by the PUCN or the Commission.

Physical collocation of CLEC equipment is available in Nevada Bell's premises wherever technically feasible and space permits. See id. ¶ 37. Nevada Bell makes available caged, shared cage, and cageless physical collocation arrangements, all at the option of the CLEC. See id. ¶¶ 43, 45, 47. Adjacent space collocation is available when all space for physical collocation is legitimately exhausted. See id. ¶ **49.** If space in an Eligible Structure subsequently becomes available, the CLEC may, at its option, relocate its equipment into that interior space. See id. Nevada Bell also will make available other technically feasible collocation arrangements. See id. ¶ 51.

A CLEC obtaining physical collocation receives access to Nevada Bell's Interconnector's Collocation Services Handbook for Physical Collocation. See id. ¶ 39. Collocation installation requirements are contained in Nevada Bell's technical publications incorporated by reference in Nevada Bell's Collocation Tariff. See id.

If Nevada Bell must deny a CLEC's request for physical collocation because space is not available, Nevada Bell attempts to notify the CLEC by letter within 10 days. See id. ¶ *56.* The CLEC may tour the structure and, if necessary, seek review of the denial by the PUCN. See id. ¶ 57. Nevada Bell maintains a publicly available document on the Internet indicating when

physical collocation space is no longer available in its central offices, pursuant to 47 C.F.R. § 51.321(h). See id. ¶ 55

The standards Nevada Bell applies for space reservation are nondiscriminatory and apply equally to affiliates of Nevada Bell. See id. ¶ 59. Nevada Bell has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market, including removal of obsolete, unused equipment upon reasonable request by a collocator or upon order of the state commission. See id. ¶ 61. Nevada Bell also conserves caged collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain one rack or bay of equipment, or even smaller. See id. ¶ 43.

Security measures for collocators in Nevada Bell's central offices reasonably protect Nevada Bell's network and equipment from harm. Many of these security measures are specifically permitted by the FCC, and any additional measures are no more stringent than those followed by Nevada Bell's own personnel or contractors. See id. ¶ 62. CLEC personnel need not undergo any security training more stringent or intensive than the training undergone by Nevada Bell personnel, nor are they required to obtain training from Nevada Bell. See id. ¶ 63. Consistent with the Collocation & Advanced Services Order,[6] any security partitions Nevada Bell deploys will not interfere with a CLEC's access to its own equipment and will not be the basis for a claim that collocation space is exhausted. See Shannon Aff. ¶ 64. CLECs have

[6] First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, ¶¶ 42, 48 (1999), vacated in part, GTE Serv. Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

access to their physically collocated equipment 24 hours a day, seven days a week, without a security escort, as well as access to restrooms and parking. See id. ¶ 65

CLECs also have reasonable access to their chosen collocation space during construction. See id. ¶ 34. Nevada Bell does not use information obtained from CLECs in the course of implementing security arrangements for marketing or other competitive purposes. See id. ¶ 62. Nevada Bell requires CLEC equipment to meet Level 1 safety standards (which is similar to the generic Telcordia Network Equipment and Building Specifications ("NEBS") Level 1 safety standards) as set forth in Nevada Bell's Technical Publication 76200, unless it is established in writing that the equipment has been in any incumbent LEC's premises without any known or documented safety problems since before January 1, 1998. See id. ¶ 66. Nevada Bell does not refuse collocation of equipment that fails to meet NEBS or other reliability standards. See id. If Nevada Bell denies collocation on the ground that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit contains all information required by the Collocation & Advanced Services Reconsideration Order.[7] See Shannon Aff. ¶ 67.

Nevada Bell provisions collocation space in conformance with FCC requirements. Although the Commission has established default national intervals for physical collocation, those intervals apply only "in the absence of state standards." Collocation & Advanced Services Reconsideration Order ¶ 21; see 47 C.F.R. § 51.323(*l*). Because Nevada Bell's PUCN-approved collocation tariff establishes collocation application and provisioning intervals, Nevada Bell is currently in compliance with this regulation. See Shannon Aff. ¶¶ 29, 33 & n.14. Nevada Bell

[7] Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 17806 (2000).

responds to each collocation application within 10 days with a notification of whether space is available, except where a CLEC places a large number of collocation orders in the same five-business-day period. & id. ¶¶ 31-32.

Construction intervals likewise are short. In central office space with existing collocation infrastructure, for example, Nevada Bell has methods and procedures in place to complete construction of caged, shared cage, and cageless physical collocation space within 90 days from the completion of the application process. See id. ¶ 33. For inactive space, the interval is 120 days, which reflects the reasonable engineering time necessary for conversion to an active collocation space. See id. Nevada Bell's application and provisioning intervals thus allow Nevada CLECs to obtain collocation in a timely manner.

In the last three months for which data are available, Nevada Bell has met each of the few collocation performance measures for which there was CLEC activity. See Johnson Aff. ¶ 52. In addition, across the California border, Pacific consistently met collocation performance measures from September through November 2002. See id. ¶ 53.

Virtual collocation is available to CLECs regardless of the availability of physical collocation. See Shannon Aff. ¶ 68. In determining equipment placement and engineering routes for all connecting cabling, Nevada Bell uses the same engineering practices for virtually collocated equipment as it does for its own similar equipment. See id. ¶ 69. Nevada Bell will also maintain and repair virtually collocated equipment, using the same standards that Nevada Bell uses for maintaining and repairing its own equipment. See id. ¶ 70.

Special Request Process. In addition to these standard offerings, CLECs may request technically feasible, custom-tailored interconnection arrangements through a Special Request process. See Deere Aff. ¶¶ 71-75. This process, which *is* also known as the Bona Fide Request

("BFR") process, allows CLECs to request modifications to existing interconnection arrangements as well as additional arrangements. Nevada Bell will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days. except under extraordinary circurnstanccs. See id. ¶ 73. If the request is technically feasible and thc CLEC authorizes further development, Nevada Bell will negotiate a schedule for arriving at price and implementation terms (which generally will not extend beyond 90 days from Nevada Bell's receipt of the request). See id. ¶ 75.

Collocation Pricing. Nevada Bell's collocation rates were agreed to as TELRIC-compliant by the parties to the PUCN's collocation pricing proceeding. See Jacobsen Aff. ¶ 37. Collocation site preparation charges are pro-rated and allocated based on the percentage of the total space used by each CLEC, so that the first CLEC in a premises is not responsible for the entire cost of site preparation. See Shannon Aff. ¶¶ **44,** 45, 48.

B. Checklist Item 2: Access to UNEs

The California Order squarely held that Pacific satisfies Checklist Item 2 in California. See California Order ¶¶ 15-103. Nevada Bell likewise provides CLECs "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3); see id. §§ 252(d)(1), 271(c)(2)(B)(ii). Like Pacific, Nevada Bell has entered into numerous interconnection agreements that require Nevada Bell to provide access to network elements on an unbundled basis and that provide access to a comprehensive set of UNEs at rates, terms, and conditions that comply with sections 251 and 252 of the Act and the terms of the UNE Remand

Order.[8] See Shannon Aff. ¶¶ 73-74; see also, e.g., ATG Agreement, App. UNE (App. B, Tab 1); Comm South Agreement, App. UNE (App. B, Tab 5).

1. UNE Combinations

Nevada Bell is in full compliance with the Commission's combinations rules, 47 C.F.R. § 51.315(c)-(f), as recently upheld by the Supreme Court in Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002). See PUCN Order at 130. Nevada Bell does not separate UNEs that it currently combines in its network unless a CLEC requests that it do so. See Shannon Aff. ¶ 79. In addition, when requested to do so, Nevada Bell will combine particular network elements that are not already combined. See id. ¶ 80; ATG Agreement, App. UNE, § 1.1; PUCN Order 130-31.

In the Nevada state proceeding, AT&T and WorldCom challenged Nevada Bell's commitment lo provide new combinations on the same basis as AT&T challenged Pacific's showing in California – i.e., that because Nevada Bell believes, based on the plain language of the Verizon decision, that there are limitations on its duty to create new combinations of UNEs on behalf of CLECs, it somehow fails to provide such combinations in a manner consistent with the Commission's rules. See Shannon Aff. ¶ 81. Like Pacific in California, however, Nevada Bell is contractually committed to provide CLECs technically feasible new combinations, and it may not unilaterally implement a narrower construction of its obligation. See id. ¶ 82. As the Commission has found, nothing more is required to demonstrate checklist compliance. See California Order ¶ 103; see also PUCN Order at 130-31.

[8] Third Report and Ordcr and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999), petitions for review granted, United States Telecom Ass'n v. FCC, 290

To allow CLECs to combine elements themselves, Nevada Bell makes available the various collocation arrangements, including caged, shared-caged, cageless, and virtual collocation, discussed earlier. See supra Parr II.A; see also Shannon **Aff.** ¶¶ 43-48, 84-85 Nevada Bell also permits CLECs to collocate their equipment in adjacent controlled environmental vaults or similar structures where space for physical collocation is not available. See Shannon Aff. ¶ 49. In addition, Nevada Bell will extend UNEs that a CLEC intends to combine to a shared UNE frame located in the Nevada Bell central office. See Deere Aff. ¶ 62.

CLECs are not required to own or operate any equipment of their own to combine Nevada Bell's UNEs. See Shannon Aff. ¶ 85. The various collocation options and other methods of access to UNEs, as well as Nevada Bell's offer to combine certain UNEs for CLECs, together provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities. Facilities-based CLECs can use these same methods to combine Nevada Bell's network elements with their own facilities. In addition, CLECs are not restricted to these methods of combining UNEs, but may request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions. See Deere Aff. ¶¶ 71-75.

2. Line Sharing

Nevada Bell is also in compliance with this Commission's Line Sharing Order.[9] See Chapman Aff. ¶ *62* (App. A, Tab 2); see also infra Part II.D.1.b. CLECs may obtain terms and

F.3d 415 (D.C. Cir. 2002), petition for cert. pending, WorldCom, Inc. v. United States Telecom Ass'n, No. 02-858 (U.S. filed Dec. 3, 2002).

[9] Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 20912 (1999), vacated and remanded, United States Telecom Ass'n v.

conditions for DSL-capable loops. including terms for line sharing, from Nevada Bell's agreements with Essex Communications or CAT Communications International, or through the multi-state generic interconnection/resale agreement. See Chapman Aff. ¶ 3 n.1. Moreover, Nevada Bell currently exceeds the Commission's requirements by voluntarily providing the splitter for a CLEC in conjunction with line sharing at the CLEC's request. See id. ¶ 66 (describing Nevada Bell's line-splitting offer).

3. Intellectual Property

Nevada Bell will make its best efforts to obtain any associated intellectual property rights that are necessary for the requesting carrier to use UNEs or ensure that none is required in compliance with the FCC's Intellectual Property Order." See Shannon Aff. ¶ 86; PUCN Order at 79-80. Nevada Bell is not aware of any action in which a third-party intellectual property owner has asserted a claim or a request for payment for a CLEC's use of Nevada Bell's UNEs See Shannon Aff. ¶ 86

4. Pricing

The vast majority of Nevada Bell's UNE rates – both recurring and non-recumng – were either developed by the CLECs or expressly agreed to by them. Nevada Bell's PUCN-approved recurring rates are the product of a Nevada-specific version of the Hatfield model that AT&T and WorldCom jointly sponsored before the PUCN, and the bulk of the non-recurring rates were adopted by stipulation of the parties. It is accordingly no surprise that, in the Nevada state 271

FCC, 290 F.3d 415 (D.C. Cir. 2002), petition for cert. pending, WorldCom. Jnc. v. United States Telecom Ass'n, No. 02-858 (U.S. filed Dec. 3, 2002).

[10] Memorandum Opinion and Order, Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements. 15 FCC Rcd 13896 (2000).

proceeding. "[n]o competitive provider. . . disputed that" the PUCN set recurring and non-recurring rates "in compliance with the FCC pricing rules." PUCN Order at 78. The PUCN further held that, consistent with the requirements of Checklist Item 2, "Nevada Bell provides access to UNEs at cost-based rates that are 'just. reasonable and nondiscriminatory' within the meaning of Section 252(d)(1) and the FCC's pricing rules." Id. at 79.

Recurring Rates. The PUCN began the process of developing recurring rates for Nevada Bell's network elements in September 1996. In the first phase of this process, the PUCN expressly adopted this Commission's TELRIC principles, and it evaluated several competing cost models that the parties claimed were consistent with those principles. See Ries **Aff. ¶¶** 8-9 (App. A, Tab **16).** After 10 days of evidentiary hearings, including testimony from 40 witnesses, as well as post-hearing briefing, the PUCN adopted a version of the Hatfield model – which AT&T and MCI had jointly supported, and which AT&T had described as "'consistent with the requirements of the 1996 Act. as well as with the TELRIC methodology adopted by the FCC,'"[11] – as the "basis upon which the [PUCN] w[ould] determine the forward looking economic costs of unbundled network elements in Nevada." Opinion and Order, Petition by Regulatory Operations Staff for Investigation into Procedures and Methodologies to Develop Costs for Bundled and Unbundled Telephone Services and Service Elements in Nevada, Docket No. 96-9035, at 25, Ordering ¶ 3 (PUCN Dec. 11, 1997) (App. E, Tab 8); see also Order, Petition by Regulatory Operations Staff for Investigation into Procedures and Methodologies to Develop Costs for Bundled and Unbundled Telephone Services and Service Elements in Nevada, Docket

[11] Ries Aff. ¶ 9 (quoting Joint Direct Testimony of Race Chen and Terry Murray on Behalf of AT&T Communications of Nevada, Inc. at 7, Petition by Regulatory Operations Staff for Investigation into Procedures and Methodologies to Develop Costs for Bundled and

No. 96-9035, at 2. Ordering ¶ 2 (PUCN Apr. 20. 1998) (App. E, Tab 17) (designating the "Nevada HAI 5.0 Model Modified" as the model to be used to identify Nevada Bell's recurring costs)

With the model selected, the PUCN next turned to calculating inputs and assumptions. After another exhaustive proceeding, including eight days of hearings, the Commission adopted input values and assumptions for use in the Hatfield model. See Ries Aff. ¶¶ 11-12. These included (i) switch investment and cable cost inputs developed by the National Regulatory Research Institute, see id. ¶¶ 62-63; (ii) the inclusion of all vertical features in the price of the switch port, see id. ¶ 65; (iii) a 9,000-foot crossover point between fiber and copper in the loop (with a maximum of 18,000 feet of copper in the loop), see id. ¶ 66; (iv) loop deaveraging at the wire-center level, see id. ¶ 67; (v) optimal fill factors, see id. ¶¶ 68-70; (vi) a cost of capital of 11.25%, see id. ¶ 71; (vii) depreciation rates taken from the PUCN's price-cap regulation, provided they fall within this Commission's authorized range, see id. ¶ 72; and (viii) a common-cost factor of 10.4 percent, see id. ¶ 73.

Many of these inputs were default values in the Hatfield model that the PUCN adopted. See, e.g., **id.** ¶¶ 66, 68-70, 71, 73. And, as it had with respect to the model itself, AT&T supported the use of these values, contending that they "'represent[ed] the costs and practices of an efficient provider using the least cost, forward-looking technology available."' See id. ¶ 11 (quoting Direct Testimony of Eugene Graczyk on Behalf of AT&T Communications of Nevada, Inc. at 6, Filing of Nevada Bell's Unbundled Network Element (UNE) Cost Study, Docket No. 98-6004 (PUCN filed July 1, 1998) (**App.** E, Tab 19)). Coupled with the version of the Hatfield

Unbundled Telephone Services and Service Elements in Nevada, Docket No. 96-9035 (PUCN filed May 9, 1997) (App. E, Tab 4)).

model adopted by the PUCN, these input values resulted in final prices that the PUCN has held are "cost-based and TELRIC compliant." PUCN Order at 77-78; see also Order, Filing of Nevada Bell's Unbundled Network Element (UNE) Cost Study, Docket No. 98-6004, at 22, ¶ 103 (PUCN Feb. 1, 1999) (App. E, Tab 21); Order, Filing of Nevada Bell's Unbundled Network Element (UNE) Cost Study, Docket No. 98-6004, at 6, Ordering ¶ 2 (PUCN May 11, 1999) (App. E, Tab 23) (adopting UNE price list).

Non-Recurring Rates. The PUCN initiated a proceeding to establish Nevada Bell's non-recurring UNE rates in December 1999. See Ries Aff. ¶ 13. This proceeding was conducted in two stages. In the first, the parties agreed to adopt the results of the California PUC's investigation into Pacific's non-recurring rates. See id. ¶ 75. Pacific's non-recurring costs were the product of extensive litigation before the California PUC, which, as this Commission recently held, properly applied TELRIC principles in establishing non-recurring rates. See California Order ¶¶ 66-70.[12] Following the filing of competing non-recurring cost studies in Nevada, the parties recognized that they could capitalize on the California PUC's work. Accordingly, after thorough investigation – including the creation of a "mapping" matrix to ensure that each non-recurring price established in California was properly matched with the corresponding Nevada Bell UNE, see Ries Aff. ¶ 79 – the parties expressly stipulated that the OANAD non-recurring rates are "'cost based and fairly represent the forward looking economic costs incurred by Nevada Bell.'" Id. ¶ 80 (quoting Partial Settlement Stipulation at 5, Filing by Nevada Bell of Its Unbundled Network Element ("LINE") Non-Recurring Cost Study Pursuant to

[12] The Commission also held in the alternative that the CPUC-approved non-recurring rates are -'within the reasonable range that application of TELRIC principles would produce." California Order ¶ 71.

the Order Issued in Docket No. 98-6004, Docket Nos. 99-12033, 99-12034 & 00-4001 (PUCN filed Sept. 18, 2000) (App. E, Tab 34)). The PUCN approved the stipulation on October 4, 2000. See Order, Filing by Nevada Bell of Its Unbundled Network Element (UNE) Nonrecurring Cost Study Pursuant to the Order Issued in Docket No. 98-6004, Docket Nos. 99-12033, 99-12034 & 00-4001 (PUCN Oct. 4, 2000) (App. E, Tab 35).

The stipulation described immediately above addressed the bulk of Nevada Bell's non-recurring UNE rates. The remainder – including non-recurring charges for, among other things, loop conditioning and manual qualification, cross-connects, dark fiber, local switching capability, and certain signaling system 7 ("SS7") elements – were litigated before the PUCN. See Ries Aff. ¶¶ 81-89. After several rounds of briefing on cost studies as well as modifications ordered by the PUCN, the Nevada commission adopted non-recurring charges for these elements in November 2000. See id.; Order, Filing by Nevada Bell of Its Unbundled Network Element (UNE) Nonrecurring Cost Study Pursuant to the Order Issued in Docket No. 98-6004, Docket Nos. 99-12033 & 00-4001 (PUCN Nov. 20, 2000) (App. E, Tab 36).

Ongoing Cost Proceeding. Through the proceedings described immediately above, the PUCN has adopted final recurring and non-recurring prices for the vast majority of Nevada Bell's UNEs. Where the PUCN has not yet established final prices – for example, for certain high-capacity loops, dedicated transport, and dark fiber – Nevada Bell has **put** in place cost-based, interim rates, subject to true-up at the conclusion of the PUCN's ongoing cost proceedings. See Ries Aff. ¶ 91; see also Texas Order ¶ 87 (approving reliance on interim rates); California Order ¶ 37 (same).

As the affidavit of Thomas Ries explains, that cost proceeding is well underway. It was initiated in August 2000, when the PUCN voted to commence a new docket for the purpose of

reexamining UNE costs and rates. See Ries Aff. 747. The parties have since tiled comments presenting recommendations for forward-looking cost models and engaged in a workshop to discuss their various recommendations. See id. ¶¶ 51-52. The parties are scheduled to file testimony supporting their proposed models in March 2003, with a hearing to commence in May. See id. ¶ 55. The PUCN has made clear that the results of this proceeding, which Nevada Bell expects to conclude this year, see id. ¶ 91 n.140, will be governed by the Commission's TELRIC rules: "The cost methodology established by the [FCC] . . . will be incorporated in any model adopted by this Commission." Procedural Order No. 3, Petition of Nevada Bell Telephone Company for an Order Commencing a Proceeding to Determine New Costs and Rates for Unbundled Network Elements, Docket No. 00-7012, at 2, ¶ 8 (PUCN July 29,2002) (App. E, Tab 41); see PUCN Order at 79 ("The Commission has and will continue to adopt cost-based, TELRIC compliant UNE rates for Nevada Bell."); see also California Order ¶ 37 (permitting reliance on interim rates, "[g]iven that the California Commission follows TELRIC principles").[13]

5. Nondiscriminatory Access to OSS

Nevada Bell provides CLECs with access to the same operations support systems serving California, including the same common electronic interfaces that are used in all of SBC's states.

[13] In the state 271 proceeding, WorldCom argued that Nevada Bell failed Checklist Item 2 because its UNE rates, considered in conjunction with its PUCN-ordered retail rates, created a "price squeeze" precluding WorldCom's entry into the local market. See PUCN Order at 78. The Commission has held, and the D.C. Circuit has affirmed, that Checklist Item 2 does not require BOCs "to guarantee competitors a certain profit margin." Kansas/Oklahoma Order ¶¶ 65, 92; see Sprint Communications Co. v. FCC, 274 F.3d 549, 554 (D.C. Cir. 2001) (Commission reasonably views "evidence showing the difficulty of making a profit . . . as subsumed within the issue of TELRIC compliance"). In any case, the PUCN properly held that WorldCom's "price squeeze" evidence fell well short of the demanding evidentiary standards the

See Huston/Lawson Joint Aff. ¶¶ 10-23 (App. A, Tab 10); Henry/Wells Joint Aff. ¶¶ 7-8 (App A. Tab 9); Cusolito Aff. ¶¶ 4-5 (App. A. Tab 3); Motta/Resnick Joint Aff. ¶ 4 (App. A, Tab 13); PwC Sameness Attestation." Following the Kansas/Oklahoma Order, in which the Commission first articulated the steps a BOC should take to establish sameness between states, Nevada Bell engaged PwC to conduct an assessment to an attestation standard to verify that Nevada Bell's systems, processes, and procedures are the same as those used by Pacific in California. See Huston/Lawson Joint Aff. ¶ 13; see also, e.g., Kansas/Oklahoma Order ¶¶ 3, 107 n.303 (articulating "sameness" test); Georgia/Louisiana Order ¶¶ 109-111 (relying on comparable test); Vermont Order ¶ 40 (same). Relying on PwC's attestation, along with its own staffs independent review of PwC's workpapers, the PUCN concluded that Nevada Bell "has demonstrated that its electronic and manual OSS are the same as those used by Pacific Bell – following the roadmap and using the criteria established by the FCC." PUCN Order at 52.[15]

Commission articulated in the Vermont Order and the BellSouth Five-State Order for establishing the existence of a "price squeeze." See PUCN Order at 78-79.

[14] In April 2002, pursuant to the SBC/Ameritech Merger Conditions – under which SBC agreed to develop and deploy, in consultation with CLECs, uniform and enhanced interfaces – and its Change Management Process, discussed below, Nevada Bell implemented its Uniform and Enhanced Plan of Record in Nevada. See Huston/Lawson Joint Aff. ¶ 18. This release provided CLECs with the ability to use uniform interfaces in all of SBC's regions, including in California, where the Plan of Record release was in place at the time this Commission approved Pacific's section 271 application. See id.

[15] Before the PUCN, certain parties contended that, where Nevada Bell relies upon manual processes that are the same as those Pacific employs, Nevada Bell should be required to establish that the processes result in performance that is in fact equivalent to Pacific's performance. See PUCN Order at 51. Where a BOC contends that "discernibly separate" systems or processes constitute a portion of the "same" OSS, however, it need only establish that they "reasonably can be expected to behave the same way." Kansas/Oklahoma Order ¶ 111; see also Georgia/Louisiana Order ¶ 111 (relying on evidence regarding "the way in which BellSouth personnel do their jobs" in separate states). As the PUCN properly found, Nevada Bell's sameness showing satisfies this standard. See PUCN Order at 51-52.

The Commission recently found that those OSS are "in compliance with checklist item 2." based on Pacific's reported performance in California as well as a "broad and objective" third-party test that -'provides meaningful evidence" regarding the capabilities of those OSS. California Order ¶¶ 72-73. Because Nevada Bell and Pacific use the same OSS, the Commission's conclusion in the California Order, as well as Pacific's performance data and the results of the California OSS test, are all applicable here and lead to the conclusion that Nevada Bell's OSS likewise comply with Checklist Item 2. See, e.g., Kansas/Oklahoma Order ¶¶ 35-36.

The Commission has repeatedly found that the most probative evidence that a BOC's OSS are operationally ready is actual commercial usage. See Georgia/Louisiana Order **App.** D, ¶ 31; Arkansas/Missouri Order App. D, ¶ 31; Kansas/Oklahoma Order ¶ 105; New York Order ¶ 89. There is **no** doubt that Nevada Bell's OSS are handling commercial volumes. See Huston/Lawson Joint Aff. ¶ 24; California Order ¶ 72. Nevada Bell's ability to handle increasing commercial volumes also demonstrates, as the PUCN found, that its electronic and manual OSS are scalable to meet reasonably foreseeable CLEC demands. See PUCN Order at 52

In addition, these systems were subjected to an IS-month-long third-party test, supervised by the California PUC and with substantial involvement by CLECs, which they passed with flying colors. See Huston/Lawson Joint Aff. ¶¶ 6, 12. The Commission has already concluded that the third-party test in California "was broad and objective and provides meaningful evidence." California Order ¶ 73; see also id. ¶¶ 74-76 (describing test). The results of that test likewise demonstrate that Nevada Bell's OSS are in place and operationally ready,

As discussed below. Nevada Bell's commercial evidence, coupled with the results of the independent third-party test and the performance of that OSS in California, demonstrates that

Nevada Bell provides nondiscriminatory access to each of the key OSS functions identified in the Commission's orders

a. Pre-Ordering

In addition to manual processes for pre-ordering through the LSC and LOC, Nevada Bell offers CLECs a choice of the same four. "real time" electronic interfaces – Uniform DataGate. Enhanced Verigate, and the industry-standard Electronic Data Interchange ("EDI") and Common Object Request Broker Architecture ("CORBA") interfaces – that the Commission reviewed and approved in the California Order. See Huston/Lawson Joint Aff. ¶¶ 46-59; see also California Order ¶ 81 ("We find that Pacific Bell provides carriers in California nondiscriminatory access to all pre-ordering functions.")

Nevada Bell's pre-ordering interfaces allow competing carriers to obtain the same information from the same underlying OSS as Nevada Bell's own retail service representatives. Specifically, CLECs are able to perform the following pre-ordering functions, among others: (1) retrieve customer service information ("CSI" or "CSR"); (2) validate addresses; **(3)** select and reserve telephone numbers; (4) determine services and features available to a customer; (5) obtain due date availability; (6) access loop qualification information; (7) view a customer's directory listing; and (8) check the status of pending orders. See Huston/Lawson Joint Aff. ¶ **48;** New York Order ¶ 132.

In the last three months for which data are available, the DataGate, Verigate, and EDI interfaces generally met or exceeded the benchmarks for all but one of the submeasurements established by the PUCN for responsiveness to CLEC pre-ordering transactions (other than the loop qualification submeasures, which are discussed below, see infra Part II.D.1.a). &Johnson

Aff. ¶ 55.[16] In addition, during that same time period, Nevada Bell satisfied in at least two of the three months each of the standards for interface availability that the PUCN has established. See Johnson Aff. ¶ 91

Integration. As the PUCN found, CLECs are able to integrate the DataGate, EDI pre-ordering, and CORBA interfaces with Nevada Bell's EDI ordering interface. See Huston/Lawson Joint Aff. ¶ 61; PUCN Order at 83-84. As in California, each of Nevada Bell's four pre-ordering interfaces provide CLECs with parsed customer service information ("CSI"), according to industry standards. See Huston/Lawson Joint Aff. ¶ 60. Moreover, the parsed fields are synchronized with the associated ordering fields, so that they can be directly mapped onto a Local Service Request ("LSR") without the CLEC needing to adjust or reconfigure the fields. See id. The Commission found that this information, as confirmed by a third-party test, demonstrates that Pacific "accurately and effectively allows competitive LECs the capability to integrate preorder responses with order requests." California Order ¶ 82. Indeed, "no competitive LEC . . . submitted any comments expressing any concerns with regard to pre-order to order integration." Id. Because Nevada Bell provides the same parsing as Pacific, the Commission's findings in California apply equally to Nevada

b. Ordering and Provisioning

Nevada Bell provides CLECs with a choice of the same three electronic interfaces for ordering and provisioning – EDI, Web-LEX, and SORD – that the Commission reviewed and approved in the California Order, as well as the option to send orders by fax. See

[16] Although Nevada has not met the benchmark for responding to telephone number assignment transactions (PM 1-107101) in each of the past three months, this is the result of additional functionality for this transaction added at CLECs' request in the U&E POR release, which increases the response time. See Johnson Aff. ¶ 55 & n.18.

Huston/Lawson Joint Aff. ¶¶ 67-86: Henry/Wells Joint Aff. Attach. A ¶ 20; see also California Order ¶ 84 ("We find. . . that Pacific Bell satisfies checklist item 2 with regard to ordering and provisioning in California.")."

Firm Order Confirmations and Reject Notifications. As Pacific does in California, Nevada Bell provides electronic FOCs and reject notices for those LSRs submitted electronically. See Huston/Lawson Joint Aff. ¶ 105: Henry/Wells Joint Aff. Attach. A ¶ 22 From September through November 2002, Nevada Bell's LEX and EDI interfaces returned FOCs within the benchmark established by the PUCN in at least two of the three months on all of the disaggregated submeasurements for electronically received and electronically handled LSRs with three months of data. See Johnson Aff. ¶¶ 63-64, 67; see also id. ¶¶ 65-66 (discussing Nevada Bell's performance in returning FOCs for manually handled orders); California Order ¶ 85 (rejecting CLEC complaints about Pacific's FOC performance). In addition, Nevada Bell's performance in returning timely reject notices was outstanding in those same months, meeting the benchmark on all of the disaggregated measurements in at least two of the three months. See Johnson Aff. ¶¶ 68-69.

Flow Through. The Commission has looked to flow-through rates as a general indicator of the performance of a BOC's OSS. See, e.g., New Jersey Order ¶ 130; Massachusetts Order ¶ 77. The Commission, however, has focused on evidence that a BOC's OSS are capable of flowing through competing carriers' orders in substantially the same time and manner as its own orders. See Massachusetts Order ¶ 78. During the third-party test of Pacific's OSS, the Test Generator obtained flow-through rates of more than 97 percent of orders during one *test* and

[17] Nevada Bell additionally accepts electronic orders for local interconnection trunks and dedicated facilities using the Access Services Request ("ASR") process. See Huston/Lawson

more than 93 percent during a second test. See Huston/Lawson Joint Aff. ¶ 114. In addition. Nevada Bell's flow-through rates lor various product types are comparable to rates that the Commission previously has found satisfy the requirements of the Act. See id. ¶ 112; Johnson Aff. ¶¶ 71-73; Massachusetts Order ¶ 78; California Order App. B (PM 4).

Flow-through perforniance in California, where volumes are higher, demonstrates that the aggregate flow-through rates achieved in Nevada understate the true capabilities of Nevada Bell's OSS, as individual CLECs have achieved flow-through levels much higher than the average. See Huston/Lawson Joint Aff. ¶ 114; see also Kansas/Oklahoma Order ¶¶ 36, 145-146. The Commission has recognized that, because all competing carriers interface with the same system, such a wide range of flow-through results strongly implies that the CLECs, rather than the BOC, are largely responsible for any "poor" flow-through performance. See New **York** Order ¶¶ 166-167, 181; Massachusetts Order ¶ 78. In addition, the Commission has repeatedly stated that it will not hold a BOC accountable for orders that fail to flow through for reasons within CLECs' control. See Massachusetts Order ¶¶ 75, 78; Kansas/Oklahoma Order ¶¶ 143, 146.

Jeopardy Notices. Nevada Bell's OSS return all applicable, industry-standard jeopardies electronically through EDI and LEX, depending on the interface over which the CLEC submitted its order. See Huston/Lawson Joint Aff. ¶ 115. Nevada Bell also provides CLECs with an additional jeopardy notification, via either electronic mail or a phone call. See Henry/Wells Joint Aff. Attach. A ¶ 38. Nevada Bell has met the vast majority of the performance standards that the *PUCN* established for the percentage of orders jeopardied and the jeopardy notice interval in at least two of the last three months for which data are available. See Johnson Aff. ¶ 171.

Joint Aff. ¶¶ 102-103.

Completion Notifications. Once work for a service order is physically completed, that order is sent through the SORD system. which places the order into "completion" status. See Huston/Lawson Joint Aff. ¶ 116. A SOC is then provided to the CLEC via EDI or LEX, depending on the interface the CLEC used to submit its order. See id. In this respect, Nevada Bell by definition provides CLECs with better than parity service, as it does not provide SOCs to its retail representatives, who must instead access SORD directly to view completion status. See id. In any case, for SOCs on fully electronic resale and UNE orders, in each month from September through November 2002, Nevada Bell satisfied the benchmark that the PUCN established. See **Johnson** Aff. ¶¶ 78-79; see also id. ¶¶ 80-81 (discussing Nevada Bell's performance in returning SOCs for manually handled orders)."

Provisioning. There are no separate provisioning interfaces that CLECs access because provisioning is essentially internal to Nevada Bell once an order is submitted. See Huston/Lawson Joint Aff. ¶¶ 69, 94. Indeed, the systems and processes for most CLEC orders are the same as those used to provision Nevada Bell's retail orders. See Motta/Resnick Joint Aff. ¶ 4 & Attach. A ¶¶ 6-10. Nevada Bell's provisioning performance "with respect to provisioning timeliness and . . . provisioning quality" (Kansas/Oklahoma Order ¶ 154) are discussed in the sections of this Brief discussing individual checklist items, as well as in the affidavit of Gwen S. Johnson and the joint affidavit of Richard J. Motta and Richard Resnick

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18 In April 2002, Nevada Bell began providing CLECs with electronic Post-to-Bill notifications, which inform a CLEC that *its* requested service change is reflected in Nevada Bell's billing systems. See Huston/Lawson Joint Aff. ¶ 118. The performance measurements adopted by the PUCN currently require Nevada Bell to report its performance in updating its billing systems within three days after order completion. From September through November 2002, Nevada Bell consistently exceeded the 95-percent standard the PUCN established. See Johnson Aff. ¶ 90.

c. Maintenance and Repair

Nevada Bell provides CLECs a choice of the same three electronic interfaces for maintenance and repair – Electronic Bonding Trouble Administration Graphical User Interface ("EBTA-GUI"), Electronic Bonding Trouble Administration ("EBTA"), and Toolbar Trouble Administration ("TBTA") – that the Commission reviewed and approved in Pacific's section 271 application. See Huston/Lawson Joint Aff. ¶¶ 127-132; California Order ¶ 86 ("We conclude that Pacific Bell provides nondiscriminatory access to maintenance and repair OSS functions.").[19]

Nevada Bell's maintenance and repair performance demonstrates that competing carriers are able to diagnose and process customer trouble complaints with the same speed and accuracy as Nevada Bell. For example, from September through November 2002, Nevada consistently met – and in many cases exceeded – the relevant standard for average time to restore service. See Johnson Aff. Attach. B (PM 21). Likewise, Nevada Bell resolves most CLEC POTS service outages faster than it resolves retail outages. See id. Attach. B (PM 22).

d. Billing

Nevada Bell offers CLECs a choice of the same three different electronic interfaces for billing – which allow them to bill their customers, to process their customers' claims and adjustments, and to view Nevada Bell's bill for services provided to the CLEC – that the Commission reviewed and approved in the California Order. See Huston/Lawson Joint Aff. ¶¶ 134-138; Flynn Aff. Attach. 1 ¶¶ 4-10 (App. A, Tab 6); California Order ¶ 89 ("We find that

[19] On January 2, 2003, pursuant to the change management process ("CMP") discussed below, SBC announced its intention to retire TBTA in January 2004. See Huston/Lawson Joint Aff. ¶ 132.